
State Water Resources Control Board

TO: SANTA MONICA BAY RESTORATION COMMISSION EXECUTIVE COMMITTEE

**FROM: Frances L. McChesney
Attorney IV
OFFICE OF CHIEF COUNSEL**

DATE: May 20, 2015

**SUBJECT: SANTA MONICA BAY RESTORATION COMMISSION FY2016 WORK PLAN:
SWRCB OFFICE OF CHIEF COUNSEL RESPONSE TO COMMENTS**

At its May 21, 2015 meeting, the Executive Committee of the Santa Monica Bay Restoration Commission (Commission) will consider whether to place consideration of the FY2016 Work Plan on the agenda for the June 18, 2015 Governing Board meeting. On May 20, 2015, Mr. Walter Lamb sent comments to the Executive Committee expressing concerns regarding the FY2016 Work Plan. This Memorandum provides some background regarding the role of the Commission and The Bay Foundation in the restoration of the Santa Monica Bay and responses to the comments.

Background

Section 320 of the federal Clean Water Act establishes the National Estuary Program, which is administered by the United States Environmental Protection Agency (USEPA). To implement the National Estuary Program, USEPA identifies national estuaries, develops a plan to restore the estuaries, and provides grants to entities, such as non-profit organizations, to pay for activities necessary to implement the plan. The National Estuary Program is designed to promote collaborative watershed-based partnerships in order to develop and implement a comprehensive conservation and management plan that addresses the range of environmental problems facing the estuary, while recognizing and balancing the needs of the local community. USEPA identified the Santa Monica Bay as a national estuary and approved the Santa Monica Bay Restoration Plan, with the concurrence of the State, that identifies actions and priorities to restore the Santa Monica Bay. In 2002, the California Legislature created the Commission as a non-regulatory, locally based, state government entity to advise and oversee activities and coordinate with state, local, and private entities to implement the Bay Restoration Plan.¹

¹ There are many estuaries identified by USEPA as part of the National Estuary Program (NEP) throughout the country, including three in California. Each has a somewhat different structure. For example, the Morro Bay NEP is
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Implementation of the comprehensive Bay Restoration Plan is a primary mission of the Commission.

To assist in the implementation of the Bay Restoration Plan, the State Water Resources Control Board (State Water Board) provides administrative services to the Commission and USEPA provides an annual grant to The Bay Foundation. The annual grant provided by USEPA as specified in Section 320 of the Clean Water Act is used to pay for activities necessary for the development and implementation of the Bay Restoration Plan. This grant is the main operational funding for the Santa Monica Bay NEP (SMBNEP). The California legislature has not appropriated funds to implement the Bay Restoration Plan or fund the Commission; the USEPA grant to The Bay Foundation provides the primary funding for implementation of the Bay Restoration Plan. In lieu of direct funding, the State Water Board contributes a match to the USEPA grant by providing state staff and state office space and other administrative services to the Commission.

Each year, as part of the grant requirement, the Commission, in collaboration with The Bay Foundation, and the Santa Monica Bay Restoration Authority, prepares and submits a work plan to USEPA that identifies the expected tasks and activities necessary to implement the Bay Restoration Plan, the objectives to be achieved, and the entity that is expected to carry out the specific tasks. The work plan also identifies funding sources and specifies a timeline and budget for the fiscal year. USEPA uses the annual work plan to track The Bay Foundation's grant expenditures and progress toward achieving the objectives of the Bay Restoration Plan and to compile information on the environmental outcomes of work plan implementation.

Response to Comments

Comment: Mr. Lamb objects to your consideration of agenda item 3.a.i. regarding the FY2016 Work Plan because you have not been provided with a copy of the draft work plan.

Response: The Executive Committee is not being asked to approve the work plan, but to consider whether to include it on the agenda for the Governing Board's consideration. The summary of proposed changes is sufficient for making a determination regarding the agenda.

Comment: Mr. Lamb opines that the "staff report provides a summary of changes which do not adequately convey the significant shift of projects and personnel from the SMBRC to the Bay Foundation."

Response: The primary purpose of the annual work plan is to identify new projects to be conducted or continuing projects that are being conducted to implement the Bay Restoration Plan and to comply with USEPA grant requirements. As Mr. Lamb and others have pointed out, previous work plans have not clearly identified the roles of the various entities with respect to

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implemented entirely by a private foundation, called the Bay Foundation of Morro Bay, using grant funds from USEPA; there is no public agency like the Commission involved in that Program. The Clean Water Act does not require a public agency to implement a bay restoration plan, but the Legislature chose to include a more inclusive structure for the Santa Monica Bay NEP.

the tasks identified in the work plan. The primary purposes of the changes between the FY2015 work plan and the FY2016 work plan are to clearly identify which entity is responsible for and the funding sources of the tasks identified in the work plan. The FY2016 work plan does not shift the entity responsible for the task; rather it accurately identifies the entity responsible. For example, the Ballona Wetlands Restoration Project has been identified for several years as a project to meet the goals of the Bay Restoration Plan. The lead agency for that project is the Department of Fish and Wildlife (DFW) and The Bay Foundation has received grants from state and private entities and other funding to assist DFW in that project. Past work plans have not clearly identified the roles of the entities.

It is unclear what Mr. Lamb means by "SMBRC personnel". The Commission has no employees. As noted above, the State Water Board provides administrative services in the form of assigning state employees to assist the Commission and The Bay Foundation is provided a grant from USEPA to assist the Commission, including staff that perform some tasks on behalf of the Commission. The Bay Foundation also receives grants and funding from other sources to conduct various activities, including assisting DFW. The FY2016 work plan will more clearly identify those different activities.

Comment: Mr. Lamb comments that the "SMBRC is a state agency that has delegated its fiscal management to a private entity, which in turn claims that its fiscal activities are not the business of the state agency. This is an untenable position, and each Executive Committee member has an individual fiduciary responsibility to the state agency to understand the relationship between the agency and its private fiscal agent."

Response: Mr. Lamb is incorrect. The Commission has not delegated its fiscal management to a private entity. The statute creating the Commission established an account in the State Treasury for the Commission. The statute states that funds appropriated by the legislature for the Commission are to be deposited into the State Treasury. The Legislature has never appropriated any funds for the Commission. The Bay Foundation is not the fiscal agent of the Commission. The term "fiscal agent" has been incorrectly used in previous documents. Rather, the Bay Foundation receives a grant from USEPA as authorized by section 320 of the federal Clean Water Act to assist in the implementation of the Bay Restoration Plan. USEPA regularly audits the Bay Foundation's implementation of the grant and those audit documents are public records. The State Water Board provides in lieu funding in the form of staff and other services.

If you have any questions, please contact me at fmcchesney@waterboards.ca.gov or at (916)341-5174.

cc: Tom Ford, Executive Director
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